



Nevada State Board of Medical Examiners

* * * MINUTES * * *

OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and videoconferenced to

the Conference Room at the Offices of the
Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, JUNE 11, 2010 – 8:00 a.m.

Board Members Present

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Renee West, Secretary-Treasurer
Javaid Anwar, M.D.
Van V. Heffner
Beverly A. Neyland, M.D.
Theodore B. Berndt, M.D.
Michael J. Fischer, M.D.
Valerie J. Clark, BSN, RHU, LUTCF

Staff Present

Douglas C. Cooper, CMBI, Executive Director
Edward O. Cousineau, J.D., Deputy Executive Director
Lyn E. Beggs, J.D., General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Interim Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Johnna S. LaRue, Compliance Officer
Donya Jenkins, Finance Manager

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Also Present

Nancy Savage, J.D., Senior Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Charles N. Held, M.D., President

The meeting was called to order by President Charles N. Held, M.D., at 8:00 a.m.

Mr. Cousineau took roll call, and all Board Members were present with the exception of Renee West. Mr. Cousineau announced that there was a quorum.

Mr. Cooper stated that Ms. West would be attending the Board meeting for a short time, in Las Vegas, in order to participate in selected agenda items, and would arrive at approximately 10:15 a.m.

Mr. Cooper congratulated Dr. Berndt on his receipt of this year's Washoe County Medical Society's C. H. Woods Award, which is awarded annually to a physician who has "the magic touch." The award is named after the first President of the Washoe County Medical Society.

Mr. Cooper advised the Board that Investigator Steven Ray had started work at the Board office, and that he would be working in the Las Vegas office. He then provided a brief summary of Mr. Ray's background and experience.

Agenda Item 2

APPROVAL OF MINUTES

- February 24, 2010 Telephone Conference Board Meeting – Open Session
- March 5, 2010 Board Meeting – Open/Closed Sessions
- March 12, 2010 Telephone Conference Board Meeting – Open Session
- April 1, 2010 Telephone Conference Board Meeting – Open Session

Mr. Heffner moved to approve the Minutes of the February 24, 2010 Telephone Conference Board Meeting – Open Session. Dr. Fischer seconded the motion, and it passed unanimously.

Dr. Berndt moved to approve the Minutes of the March 5, 2010 Board Meeting – Open/Closed Sessions. Dr. Neyland seconded the motion, and it passed unanimously.

Dr. Berndt moved to approve the Minutes of the March 12, 2010 Telephone Conference Board Meeting – Open Session. Dr. Fischer seconded the motion, and it passed unanimously.

Dr. Berndt moved to approve the Minutes of the April 1, 2010 Telephone Conference Board Meeting – Open Session. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 3

DISCUSSION REGARDING ATTENDANCE AND PROTOCOL AT BOARD MEETINGS

- Charles N. Held, M.D., President; Douglas C. Cooper, CMBI, Executive Director

Dr. Held stated he wanted to emphasize the critical importance of constant and continuing attendance to Board business by all Board members, including attendance at meetings and telephone conferences and doing their work on the Investigative Committees and the License Application and Malpractice Review Committee. There are only four scheduled Board meetings per year and they are scheduled a long way in advance, so it is hoped that all Board members can attend all of those meetings. It is also important that everyone turn on and off their microphones appropriately and identify themselves when speaking because otherwise it is difficult for people looking back at the recordings or transcribing them to determine who said what.

Mr. Cooper added that everyone should turn off their cell phones during the meeting and that there will be more frequent breaks during meetings so that everyone can attend to their cell phone business at those times.

Agenda Item 4

PRESENTATION BY THE FEDERATION OF STATE MEDICAL BOARDS

- Ram R. Krishna, M.D., FSMB Liaison Director to the Nevada State Board of Medical Examiners, and David A. Johnson, MA, FSMB Vice President for Assessment Services – Federation of State Medical Boards

Ram R. Krishna, M.D., FSMB Liaison Director to the Board, and David A. Johnson, FSMB Vice President for Assessment Services, of the Federation of State Medical Boards, gave a presentation describing the Federation, its mission and the services and resources it provides to state medical and osteopathic boards. Additionally, they provided information regarding the following topics that were of specific interest to the Board: maintenance of licensure, the uniform application form and telemedicine.

Discussion ensued regarding these topics and regarding portability of licensure.

At the conclusion of the presentation, Dr. Held asked whether there were any members of the public present who would like to offer comment. Liliam Shell, of Nevada Health Centers, Inc., advised the Board that she runs the rural clinics for Nevada Health Centers, of which there are 14. She stated Nevada Health Centers had worked for a time with telemedicine, with the University of Nevada, and that a couple of their rural facilities still have some equipment that allows a physician to look at a patient in detail. Additionally, they worked with the Board of Pharmacy and the Nevada Assembly to promulgate a telepharmacy regulation, which is currently before the Legislative Counsel Bureau for approval.

Agenda Item 5

**RECEIPT AND REVIEW OF PUBLIC COMMENTS AND CONSIDERATION OF
ADOPTION OF PROPOSED AMENDMENT TO NEVADA ADMINISTRATIVE CODE
CHAPTER 630, RELATED TO REGULATION OF DELEGATION BY PHYSICIANS AND
PHYSICIAN ASSISTANTS TO MEDICAL ASSISTANTS**

- Douglas C. Cooper, Executive Director; Edward O. Cousineau, J.D., Deputy Executive Director

Mr. Cooper stated that the final draft of the proposed regulation was approved by the Legislative Counsel Bureau on February 1, 2010. A hearing on the proposed regulation was held on March 16th, at which additional verbal and written input was received. It is currently the Board's position that NRS 454.213(11) allows medical assistants to administer "dangerous drugs," which are prescription drugs other than controlled substances. These are defined in NRS 454.201. The Board's interpretation is that medical assistants, under supervision of their delegating practitioners, can administer these medications through a written agreement between the "ultimate user" (the patient) and the delegating practitioner. If the Board adopts the regulation at this meeting, it will then go to the Legislative Counsel Bureau for a final review, and if approved there, it will go to the Legislative Commission for final approval.

Dr. Held asked whether there were any members of the public present who would like to offer comment.

Lawrence Matheis stated he had nothing to add to the written testimony that the Nevada State Medical Association had already provided. He stated they had a concern with respect to Section 7(4)(d), on page 3 of the proposed regulation, as it may be too broad, in that it does not allow medical assistants to administer oral anesthetic agents, and that it is something that will need to be clarified with those who utilize medical assistants.

Carol Cohen, CMA, current President of the Nevada State Society of Medical Assistants, read comments into the record. She stated they were available to assist in whatever way they could and that they are very concerned about regulations and protection of the public.

Mr. Cooper asked whether Ms. Cohen had submitted her comments to the Board in writing. She stated she had not, but that she would do so at the conclusion of the meeting.

Liliam Shell, of Nevada Health Centers, Inc., questioned whether the word "immediate" was necessary in Section 7(3), on page 2 of the proposed regulation.

Discussion ensued regarding the language and intent of Section 7(3).

Dr. Fischer moved that the Board add the following language to the proposed regulation: (1) replace the word "a" between the words "treating" and "patient" in Section 6 with the words "an established"; (2), add a subsection (c) to Section 7, that reads as follows: "The medical assistant is employed by the delegating practitioner or the delegating practitioner and the medical assistant share a common employer; and (3) add the word "exigent" between the words "the" and "needs" in the first line of Section 7(3). Dr. Berndt seconded the motion.

Discussion ensued regarding the proposed motion.

Dr. Held asked whether there were any members of the public present who would like to offer comment.

Debra Scott, Executive Director of the Nevada State Board of Nursing, stated that the Nevada State Board of Nursing was very much in agreement with the changes proposed in the motion on the table.

A vote was taken on the motion and it passed unanimously.

Dr. Fischer moved that the Board adopt the proposed regulation as modified. Dr. Neyland seconded the motion.

Ms. West joined the meeting at 9:50 a.m. Ms. Beggs noted her arrival for the record.

Jacob Hafter, Esq. stated there were no hard copies of the proposed regulation available for review in the conference room at the Board of Dental Examiners office.

Mr. Cooper stated that a copy of the proposed regulation had been available on the Board's website for some time, had been mailed to those on the Board's mailing list and had been posted at various public locations, but that hard copies would immediately be sent to the Dental Board and requested that the vote on the motion be postponed until such time as those copies were received at the Dental Board office and members of the public there had an opportunity to review them.

When the Board returned to discussion of this agenda item, Dr. Held said he thought the definition of "medical assistant" in Section 4 was a little vague and he wanted to amend the motion to include modification of that definition to the following: "Medical assistant means a person to whom a task is delegated to perform by a delegating practitioner and for which task the delegating practitioner accepts full responsibility." Dr. Fischer accepted the amendment and Dr. Rodriguez seconded the amended motion.

Dr. Held asked whether there were any members of the public present who would like to offer comment, and there were none.

A vote was taken on the motion and it passed unanimously.

Agenda Item 7

CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Consideration of Amendment to Nevada Administrative Code Chapter 630, to Delineate Certain Circumstances Where Remediation Agreements are not Appropriate
- Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.525 to Change Licensure Renewal Date as it Applies to Practitioners of Respiratory Care
- Edward O. Cousineau, J.D., Deputy Executive Director

Mr. Cousineau requested authority to proceed with the regulatory adoption process for amendments to two currently existing regulations. The first is to create a regulation that will

limit the availability of remediation agreements under the newly-created law. Specifically, remediation agreements will not be available in cases where a patient has suffered serious harm or death as a result of an act of a licensee, or in cases in which a licensee has committed an act which constitutes an intentional knowing or reckless violation of any provision of Chapter 630, or in cases where a licensee has entered into a similar remediation agreement within the preceding five years. The statute required that regulations be adopted in relation to remediation agreements.

Mr. Heffner moved that the Board authorize Mr. Cousineau to proceed with the regulatory process. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 8

CONSIDERATION OF REQUEST OF KIM ADAMSON, M.D., FOR MODIFICATION OF CONDITIONS ON HIS COUNTY-RESTRICTED MEDICAL LICENSE

- Kim Adamson, M.D.; Maria Nutile, Esq.

Dr. Adamson was present in Reno.

Dr. Held explained that the Board had received a letter from Dr. Daniel Caruso stating he has been reviewing Dr. Adamson's charts, and feels Dr. Adamson has fulfilled the requirements and no longer needs to have his charts reviewed.

Dr. Adamson stated he was requesting that the Board recognize that he has completed the requirement for chart reviews. He acknowledged that he would still have a county-restricted license, but would no longer be under supervision.

Ms. Daniels clarified that the condition of a preceptor would be removed from his license.

Dr. Held moved that the Board remove the condition requiring chart review from Dr. Adamson's license. Dr. Rodriguez seconded the motion, and it passed unanimously.

Ms. Daniels stated the county-restricted license will be in effect for two more years and at that point Dr. Adamson can apply for an unrestricted license.

Agenda Item 9

RECONSIDERATION OF THE BOARD'S DECISION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NAVNEET SHARDA, M.D.*, BME CASE NO. 08-11856-1

- Nancy Savage, J.D., Senior Deputy Attorney General

Ms. Savage explained the procedure the Board should follow. The Board would reconsider Counts IV and IX only, no additional evidence or argument would be introduced and the Board would deliberate and decide either to uphold its prior order or change it.

Dr. Held named the adjudicating Board Members who would be reconsidering the matter.

Ms. Savage read Count IV of the Amended Complaint against Dr. Sharda.

Dr. Held stated that he saw no reason to change his previous decision.

Dr. Anwar stated he also found no reason to change his previous decision.

Ms. West stated she had read through all the materials again and did not see anything new to consider.

Dr. Fischer moved that Dr. Sharda be found guilty of Count IV. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Savage read Count IX of the Amended Complaint against Dr. Sharda.

Ms. West said she would make the same comment on Count IX as she did for Count IV.

Dr. Anwar stated he found no reason to change his decision on Count IX.

Dr. Berndt moved that Dr. Sharda be found guilty of Count IX. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Dr. Rodriguez moved that the Board impose the prior discipline that was originally imposed. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item10

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. PAUL CUTARELLI, M.D., BME CASE NO. 08-29655-3

- Nancy Savage, J.D., Senior Deputy Attorney General

OPEN SESSION

Hal Taylor, Esq. was present at the meeting on behalf of Dr. Cutarelli.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating Board members for the adjudication, Ms. West presided over the matter.

Ms. Savage asked whether the adjudicating Board Members had received and reviewed the materials they were provided relative to the adjudication, and they responded in the affirmative. Ms. Savage then read Count I of the Second Amended Complaint against Dr. Cutarelli.

Dr. Fischer moved that the Board find Dr. Cutarelli guilty of Count I. He then withdrew his motion.

Dr. Fischer stated he believes it is the responsibility of a surgeon to see a patient personally, evaluate the patient personally and if he performs surgery on the patient, it is his responsibility to follow-up with the patient in a reasonable amount of time, which he does not believe Dr. Cutarelli did in this situation.

Dr. Fischer moved that the Board find Dr. Cutarelli guilty of Count I. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

It was noted for the record that Count II of the Second Amended Complaint had been dismissed at the time of the hearing in the matter.

Ms. Savage read Count III of the Second Amended Complaint.

Dr. Fischer stated there was no doubt in his mind that Dr. Cutarelli is a qualified ophthalmic Lasik surgeon; however, due to the manner in which he dealt with the patient, both on a preoperative and postoperative basis, he believes he is guilty of Count III of the Second Amended Complaint.

Dr. Anwar, Dr. Neyland and Ms. Clark all stated they agreed with Dr. Fischer's statement.

Mr. Heffner moved that the Board find Dr. Cutarelli guilty of Count III. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Savage outlined the options available to the Board for imposition of disciplinary action.

Discussion ensued regarding what sanctions would be appropriate in the circumstances.

Ms. Castagnola stated the costs incurred by the Board in the investigation of the case were \$24,220.87.

Dr. Anwar moved that Dr. Cutarelli receive a public reprimand, pay a fine of \$5,000, work under supervision of an ophthalmologist who performs Lasik surgery on a routine basis for a period of 30 surgical days and perform a minimum of 100 hours uncompensated community service. Within 30 days, Dr. Cutarelli was to submit to the Board for approval his proposal for performance of the community service, and the community service was to be completed within six months. The Board further ordered that Dr. Cutarelli reimburse the Board's costs and expenses incurred in the investigation and prosecution of the case against him. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LANING ANDREWS, M.D.*, BME CASE NO. 09-12260-1

- Lyn E. Beggs, J.D., General Counsel

OPEN SESSION

Dr. Held named the adjudicating Board Members who would be considering the matter.

Ms. Beggs outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. VICTOR GRIGORYEV GRIGG, M.D.*, BME CASE NO. 10-10569-1

- Edward O. Cousineau, J.D., Deputy Executive Director

OPEN SESSION

Mr. Cousineau outlined the facts of the case and the terms of the proposed settlement agreement.

Dr. Held named the adjudicating Board Members who would be considering the matter.

Dr. Fischer moved that the Board accept the settlement as presented. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 14

CONSIDERATION AND DISCUSSION REGARDING LEGISLATIVE INITIATIVES FOR 2011 LEGISLATIVE SESSION

- Douglas C. Cooper, CMBI, Executive Director

Mr. Cooper advised the Board he had reviewed with staff and the Board's lobbyist various items that might be included in the Board's list of legislative initiatives for the 2011 Legislative Session. Based upon those reviews, it was decided it was not a good time to request changes to items that were changed in 2009, so those items were not included in the list that was before the Board for consideration at the meeting. He then outlined the various items that were included on the list, with assistance from Ms. Beggs and Ms. Daniels.

Discussion ensued regarding various proposals on the list.

Agenda Item 15

**CONSIDERATION AND DISCUSSION REGARDING SECURITY MEASURES
AT BOARD MEETINGS**

- Michael J. Fischer, M.D., Board Member; Douglas C. Cooper, CMBI, Executive Director

Dr. Fischer stated he brought up the question of Board meeting security at the Federation of State Medical Boards Annual Meeting, and it was the consensus that Board investigators are very astute and will warn their Board if they feel it is necessary to have a security officer at a particular meeting.

Dr. Held asked Dr. Ram Krishna, a member of the Arizona Medical Board, what his Board does in this regard, and Dr. Krishna stated they had received a threat from a psychiatrist, which prompted them to look into, and begin using, armed security. Since then they have had to use these guards a couple of times to escort a physician from the room.

Mr. Cooper described the options available to the Board for armed security.

Don Havins asked whether there had ever been a problem at a meeting, and stated that there hadn't been an issue at any meeting he had attended since 1999.

Dr. Held stated he was aware of several threats that had been received by the Board, but that none had been acted upon.

Discussion ensued regarding the need for security at meetings.

Mr. Cooper stated he would obtain a cost estimate to present to the Board for consideration at its next meeting.

Agenda Item 16

REPORTS

- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - John H. Steinmetz, R.R.T., Advisory Committee Member
- Investigative Committees - Charles N. Held, M.D., President, Chairman, Investigative Committee A
Benjamin J. Rodriguez, M.D., Vice President, Chairman, Investigative Committee B
 - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division
 - Status of Investigative Caseload - Pamela J. Castagnola, Interim Chief of Investigations
 - Quarterly Compliance Report - Johnna S. LaRue, Compliance Officer
- Nevada State Medical Association Report - Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Report - Annette Teijeiro, M.D., President, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board Vice President;

Physician Assistant Advisory Committee

John B. Lanzillotta, P.A.-C, stated the Advisory Committee had nothing to report at that time.

Mr. Cousineau stated Board staff was still working on a proposed regulatory change with respect to NAC 630.496.

Practitioner of Respiratory Care Advisory Committee

John Steinmetz stated the Advisory Committee had nothing to report at that time.

Investigative Committees – Charles N. Held, M.D., President, Chairman,
Investigative Committee A
Benjamin J. Rodriguez, M.D., Vice President, Chairman,
Investigative Committee B

- Consideration of Cases Recommended for Closure by the Committees

Dr. Rodriguez reported that Investigative Committee B met and considered 98 cases, authorized the filing of a formal complaint in 4 cases, sent 1 case out for peer review, requested an appearance in 1 case, issued 19 letters of concern, referred 1 case back to investigative staff for further investigation or follow-up, and recommended closure of a total of 72 cases.

Dr. Held reported that Investigative Committee A had met on two occasions and had considered a total of 315 cases, authorized the filing of a formal complaint in 14 cases, sent 5 cases out for peer review, requested an appearance in 13 cases, issued 44 letters of concern, and recommended closure of a total of 149 cases at the March 12, 2010 meeting and a total of 81 cases at the May 21, 2010 meeting.

Dr. Held moved to approve for closure the cases recommended by the Investigative Committees. Dr. Rodriguez seconded the motion, and it passed unanimously.

Investigations Division

- Status of Investigative Caseload

Ms. Castagnola reported that there were currently 435 open investigative cases, which decreased from 602 open cases at the time of the last Board meeting. The current number of cases per investigator was 62 on average. There were 18 peer reviews in the field and 19 peer reviews awaiting assignment. The reasons for the significant drop in the caseload were that many legal cases had been resolved, due in part to the addition of another attorney on staff, a large number of Clark County civil cases had also been resolved, and cases are moving faster through Investigations in general.

- Quarterly Compliance Report

Ms. LaRue stated there were currently 57 open investigative compliance cases and 51 open licensing compliance cases. Since the last report in March, 22 investigative compliance cases and 2 licensing compliance cases had been closed. To date for 2010, 112 letters of concern had been issued. As of March 31, \$32,751.59 in costs and \$2,600 in fines had been collected. An additional \$26,000 in costs and \$20,000 in fines had been collected through the end of May. The current outstanding costs owed to the Board were \$210,689.19, and the current outstanding fines owed were \$65,500, for a total outstanding owed to the Board of \$276,189.19. One physician was currently in collections, and as a result was paying, and there were a number of others that staff was working on sending to collections. Two physicians pay the Board compliance monitoring fees and the Board has collected \$2,100 in monitoring fees.

Mr. Cooper added that the Board is using a much more aggressive collections technique, in that it is now using a private collections company to assist in some cases.

Ms. West left the meeting at 11:58 a.m.

Discussion ensued regarding the large increase in the number of letters of concern that have been issued to date in 2010 over previous years.

Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, reported on recent activities of the Nevada State Medical Association (NSMA). The NSMA recently held its 106th annual meeting, and elected Ronald Kline, M.D. as its new President and Brian Callister, M.D. as its new President-Elect. Medicare is a topic the Board will be hearing a lot about. As of the first of June, claims were to begin being paid at a reduced rate and Nevadans on Medicare or Tricare will find it increasingly difficult to find physicians who will accept those programs. They are estimating 30 to 31% of physicians have indicated they will be restricting their Medicare practices and not accepting new Medicare patients until the issue is resolved, and it is not clear that Congress will be able to do so. The same bill that addresses the Medicare issue also addresses extensions of a number of programs for which there is no funding, such as COBRA, which are extremely important with respect to treatment access for Nevadans. Therefore, the uninsured, those on Medicaid and Medicare may all be seeing significant access problems. The NSMA is working with the Nevada Health Information Technology Task Force with the goal of a significant increase in the integration of HIT into physician practices. At the request of the Nevada State Health Division, the Attorney General's Office issued an opinion regarding the Corporate Practice of Medicine Doctrine, providing for an exemption that allows licensed hospitals in the state to employ physicians. He believes this will create a growing set of issues regarding accountability of physicians in those employment settings. There is also a lawsuit in the Supreme Court challenging the non-economic damages cap in the medical liability law and the NSMA is working with others to file an Amicus Brief with the Supreme Court in the case.

Discussion ensued regarding primary care access issues and the corporate physician movement.

Clark County Medical Society Report

Annette Teijeiro, M.D., President of the Clark County Medical Society, advised the Board that the Executive Director position remains open and in the interim, the Clark County Medical Society will continue to send a representative from the Board to the meetings of the Board of Medical Examiners. She then reported on recent activities of the Clark County Medical Society, including their mini-internship program, its Health Care Reform Forum held on March 18 and their scholarship program.

Mr. Cooper introduced the Board's new Investigator, Steven Ray, to the Board.

Mr. Heffner left the meeting at 12:45 p.m.

Agenda Item 24

EXECUTIVE STAFF/STAFF REPORTS

- Consideration and Approval of 2009 Board Annual Report
- Update Concerning Board's Finances
- Consideration and Approval of Revisions and Additions to *Policy and Procedure Manual*
- Consideration of Request for Staff and Board Member Attendance at Educational Meetings
- Informational Items
 - Prescription Drug Abuse Project
 - Legislative Committee on Health Care
 - Renee West, Secretary-Treasurer; Douglas C. Cooper, CMBI, Executive Director;
 - Donya Jenkins, Finance Manager

Discussion and Approval of 2009 Board Annual Report

Mr. Cooper highlighted the information included in the Board's 2009 Annual Report and reported that since 2004, there has been a steady increase in the number of disciplinary actions taken against physicians, which he anticipates will continue to grow.

Discussion ensued concerning the ratio of disciplinary actions to number of licensed physicians.

Dr. Held requested that a new statistic, showing disciplinary actions per 1,000 active-status physicians, be included in future annual reports.

Dr. Berndt stated that there was an error in the report regarding his biographical information, and said he would provide the correction to Mr. Cooper later.

Dr. Held moved to approve the 2009 Board Annual Report with Dr. Berndt's biographical modification. Dr. Rodriguez seconded the motion, and is passed unanimously.

Update Concerning Board's Finances

Mr. Cooper described the photographs of the Board's Las Vegas office that had been provided to the Board and explained how money saved from other areas in the budget was essentially paying for the Las Vegas office startup and current expenses.

Ms. Jenkins stated that since Mr. Cooper had become Executive Director, he had reviewed every single financial aspect of the Board and made significant changes in various situations. She then outlined the Board's financial statements as of March 31, 2010, which had been provided to the Board for review.

Mr. Cooper told the Board that letters had been sent to all of the Board's vendors requesting a 15% reduction in their rates, due to the current economic situation, and positive responses had been received from many.

Consideration and Approval of Revisions and Additions to *Policy and Procedure Manual*

Mr. Cooper explained that necessary changes were made to the *Policy and Procedure Manual* due to restructuring and for additional clarification of the dress code, annual and sick leave policies, and to bring the Board more in line with what other state agencies do pursuant to the State Administrative Manual. Ms. Munson added that changes were also made to the travel policies to provide additional clarification.

Dr. Anwar moved that the Board approve the changes to the *Policy and Procedure Manual*. Dr. Fischer seconded the motion, and it passed unanimously.

Consideration of Request for Staff and Board Member Attendance at Educational Meetings

Mr. Cooper outlined the requests for attendance at educational meetings which had been provided to the Board for consideration, and the costs associated with those requests.

Dr. Rodriguez moved that the Board approve the requests for training. Dr. Neyland seconded the motion, and it passed unanimously.

Discussion ensued regarding the possibility of sending additional Board members to the FSMB annual meeting each year, in addition to new Board members and those that receive scholarships from the Federation of State Medical Boards to attend.

Informational Items

- Prescription Drug Abuse Project
- Legislative Committee on Health Care

Mr. Cooper explained that regulation of medical assistants and how to reduce drug abuse in Nevada are the two primary issues the Legislative Committee on Health Care has been working on with the health care-related Boards. With respect to the latter, the Legislative Committee on Health Care wants to pass a law requiring physicians to obtain a written acknowledgement, signed by the patient, informing the patient that before he or she receives any type of controlled substance, the physician may run a patient utilization report on him or her under certain conditions. The Retail Association in Nevada requested that immunity language be included in the law, and proposed language to that end has been provided by the Drug Abuse Task Force.

Discussion ensued regarding how this law would affect physicians in their practices.

Mr. Cooper explained that as a result of discussions held by the Legislative Committee on Health Care with the Boards, the Health Division and other entities, the Legislative Committee on Health Care created a summary of options for regulating medical assistants. The first is to authorize medical assistants to administer "dangerous drugs," which the Board fully supports. The second is to require physicians to verify a medical assistant's skills prior to delegating duties, which is already part of the Board's regulation and which the Board supports. The third is to require medical assistants to meet minimal training standards, which the Board neither supports nor opposes. The fourth is to require supervising physicians to register medical assistants, which the Board opposes. Mr. Cooper responded to the Legislative Committee on Health Care with a letter stating the Board's position on each option and providing support for each position.

Agenda Item 18

LEGAL REPORTS - Lyn E. Beggs, J.D., General Counsel

- Board Litigation Status

Ms. Beggs reported that at the meeting, the Board had considered one adjudication, one request for reconsideration of a previous adjudication and two proposed settlements. Forty letters of concern were issued since the March Board meeting, 11 formal complaints had been filed since that meeting, 88 cases were currently pending in the Legal Department, 16 pending filing of formal complaints, 53 were scheduled for hearing through December 21, 2010, and 14 cases were in the queue for CMT review. Within the last month, there had been summary suspensions of 3 physician licenses and 1 physician assistant license. The Attorney General's Office will no longer be representing the Board in any civil litigation cases. Mr. Cooper and she had met with Keith Munro, Chief of Staff for the Attorney General's Office, and he indicated that due to furloughs, layoffs, etc., they could no longer represent the Board in those matters. Mr. Cooper and she have talked with outside counsel regarding those cases that will require outside representation, and the Board should be able to obtain top legal representation for the same amount it has been paying the Attorney General's Office. Between the Board's legal staff and outside counsel, civil litigation cases will be dealt with in the most expeditious and appropriate manner.

Agenda Item 19

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the March 5, 2010 Board Meeting

Dr. Anwar moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the March 5, 2010 Board Meeting. Dr. Rodriguez seconded the motion, and it passed unanimously.

Agenda Item 20

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

20(a) Dale Mericle, M.D.

Dr. Mericle was present with his attorney, Lee Hodgkin, Esq.

Dr. Held asked Dr. Mericle whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Mericle stated he had provided materials to the Board for review, and Dr. Held acknowledged that the Board had been provided with those materials.

Dr. Mericle updated his malpractice case information for the Board.

Dr. Held asked Dr. Mericle why he wanted a license in Nevada, and Dr. Mericle said he would have to travel a lot less, and that he was interested in general practice medicine.

Dr. Held asked Dr. Mericle to explain his understanding of why he was denied a license in Nevada on two previous occasions.

Dr. Mericle stated that he understood what was written down but he claimed that fraud implies intent and there was no intent.

Dr. Held clarified that the denials were based on a decision by the Board that Dr. Mericle had either deceptively or fraudulently completed his application, and Dr. Mericle agreed that was his understanding.

Dr. Held questioned Dr. Mericle regarding the fact that he did not disclose the loss of temporary privileges at Modoc Medical Center in his response to Question 33 on his latest application for licensure. Dr. Mericle stated that following an alleged incident with a young woman, he was told he wasn't needed, but he was never notified that his privileges had been terminated. He never received any information from them, in writing or otherwise, that his privileges had been terminated.

Dr. Held stated he was concerned, in that some of the complaints that arose at Modoc Medical Center were similar to those that led to his previous problems in California.

Dr. Berndt asked staff to confirm with Modoc Medical Center whether they had communicated to Dr. Mericle the same information they had communicated to the Board. Ms. Daniels said that Licensing staff would attempt to contact them.

Discussion ensued regarding athletic examinations performed by Dr. Mericle on young female patients and whether a breast examination was appropriate as part of those examinations. Dr. Mericle stated the Board already had this information. Dr. Held explained there was a concern that something which was a problem on his first application was now being reflected on his current application. The problem with the first application was that the Board had the sense Dr. Mericle had either misrepresented or fraudulently misstated information on it and Dr. Mericle's current application didn't include information regarding a problem at Modoc Medical Center involving five complaints. Dr. Mericle stated the form asked for investigations and he was not aware of any investigations.

Dr. Neyland moved that the Board table further consideration of Dr. Mericle's application for licensure until the Board received a response from Modoc Medical Center by phone. Dr. Rodriguez seconded the motion, and it passed unanimously.

When the Board returned to discussion of this agenda item, Dr. Held stated the Board was going to be unable to clarify the issues surrounding Modoc Medical Center that day and would like to table further consideration of Dr. Mericle's application until the September meeting to allow time to receive that clarification. Dr. Mericle agreed.

20(b) Michael Tindel, M.D.

Dr. Held asked Dr. Tindel whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Anwar questioned Dr. Tindel regarding his board certification in Gastroenterology, and Dr. Tindel stated he was not currently certified in Gastroenterology, and was not required to be, but that he was studying for the exam at that time.

Dr. Anwar questioned Dr. Tindel regarding his affirmative responses to questions 12, 19 and 31 on his application for licensure.

Dr. Tindel explained the circumstances surrounding suspension of privileges at Columbia Presbyterian University Medical Center and stated the allegations that were the basis for the suspension were false and he was contesting the action.

Discussion ensued regarding Dr. Tindel's explanation and the written information that had been provided to the Board.

Dr. Fischer moved to grant Dr. Tindel's application for licensure. Dr. Rodriguez seconded the motion, and it passed, with Dr. Anwar voting against the motion and all other Board Members voting in favor of the motion.

20(c) Jayendra Shah, M.D.

Dr. Held asked Dr. Shah whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez questioned Dr. Shah regarding his affirmative response to Question 28 on his application for licensure.

Dr. Shah explained the circumstances surrounding suspension of his license by the California Medical Board in 1997 and his lawsuits against the California Medical Board.

Dr. Rodriguez stated that shortly after Dr. Shah completed psychiatric treatment in 2000, he wrote a letter which was very concise and very understandable; however, correspondence written by him prior to that treatment and subsequent to it does not reflect that same clear thought process, and instead reflects a very rapid, somewhat disorganized and scattered thought process, which is of concern.

Dr. Rodriguez questioned Dr. Shah regarding what he was currently doing in California and what he planned to do if granted a Nevada license, and Dr. Shah explained both.

Dr. Rodriguez stated he was having a difficult time following Dr. Shah's train of thought with respect to his responses at the meeting, and that he was concerned that Dr. Shah appeared to have had a difficult time filling out his application, in that he responded to some questions both affirmatively and negatively. He then cited an example for Dr. Shah.

Dr. Rodriguez moved that the Board require Dr. Shah to undergo a psychiatric evaluation to determine his competency for licensure in Nevada and consider his application at the next Board meeting.

Dr. Shah asked who would be performing the evaluation, and Ms. Beggs stated the evaluation would be performed by Dr. Piasecki in Reno. Dr. Rodriguez stated it would be a psychiatrist who does not know Dr. Shah.

Dr. Berndt seconded the motion.

Dr. Rodriguez restated his motion as follows: That Dr. Shah undergo a psychiatric evaluation based on NRS 630.318, "that the physician undergo a mental or physical examination testing his or her competence to practice medicine," based on difficulty in following his train of thought, both written and verbal. Pursuant to NAC 630.080(6), Dr. Shah will be required to pay the costs of that evaluation. A vote was taken on the motion, and it passed unanimously.

20(d) Gertrude Morales Goldstein, M.D.

Dr. Jeffrey Caplan, Medical Director of Northern Nevada Adult Mental Health Center, was present with Dr. Goldstein.

Dr. Held asked Dr. Goldstein whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Held questioned Dr. Goldstein regarding the fact that she had only practiced clinical medicine for a brief time in her career.

Dr. Goldstein explained why she had initially stopped practicing clinical medicine and had not practiced much clinically in the last 21 years. She stated she had stayed current by taking CME credits and assisting her friends in their practices.

Dr. Caplan explained they wanted to hire Dr. Goldstein as a locum tenens physician to fill one of their many vacancies. As Medical Director, he would essentially be acting as her supervisor.

Dr. Goldstein explained that she was currently practicing psychiatry for two companies in Manhattan, and described her current duties. She had been working there since July of 2009.

Dr. Berndt asked Dr. Caplan what Dr. Goldstein's duties would be at Northern Nevada Adult Mental Health Center. Dr. Caplan explained that she would work in the intake unit performing psychiatric evaluations to determine whether patients need to be admitted to the hospital or could be managed on an outpatient basis. It is a 72-hour unit, so there would be some med management during that time, but no real counseling or therapy.

Dr. Held moved that the Board grant Dr. Goldstein a facility-specific license pending satisfactory completion of a peer review. Dr. Fischer seconded the motion, and it passed unanimously.

20(e) Melvin Perry, Jr., M.D.

Dr. Held asked Dr. Perry whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Fischer questioned Dr. Perry regarding his affirmative response to Question 19 on his application for licensure, and Dr. Perry explained the circumstances surrounding his being placed on probation and the letters of reprimand he received during his fellowship at the Medical College of Georgia.

Dr. Berndt moved to grant Dr. Perry's application for licensure. Dr. Neyland seconded the motion, and it passed unanimously.

20(f) Robert Ueda, M.D.

Dr. Held asked Dr. Ueda whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt questioned Dr. Ueda concerning his affirmative response to Question 19 on his application for licensure, and Dr. Ueda explained the circumstances surrounding his being placed on probation during his residency training at the Mayo Clinic.

Dr. Berndt questioned Dr. Ueda concerning his affirmative response to Question 31 on his application for licensure, and Dr. Ueda explained the circumstances surrounding the citation he received from the Florida Medical Board as a result of their claim that he did not notify them of suspension of his privileges at St. Mary's Hospital in Tucson, Arizona.

Dr. Berndt questioned Dr. Ueda regarding his affirmative response to Question 12 on his application for licensure, and Dr. Ueda described the circumstances surrounding the malpractice claims against him.

Dr. Berndt moved to grant Dr. Ueda's application for licensure. Dr. Neyland seconded the motion, and it passed unanimously.

20(g) Juan Martinez Herrera, R.R.T.

Dr. Held asked Mr. Martinez Herrera whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez questioned Mr. Martinez Herrera regarding his affirmative response to Questions 12 and 22 on his application for licensure and asked him what had changed for him in recent years to turn his life around.

Mr. Martinez Herrera explained that he decided to change his life when he realized he needed to do so, and described what he planned to do if granted a license in Nevada. He stated he had signed a six-month contract with PRN PRN that would be reviewed by PRN PRN at the end of six months to determine whether he needed to continue with the program or could be released from the program at that time.

Dr. Rodriguez moved to grant Mr. Martinez Herrera's application for licensure, contingent upon compliance with, and completion of, his contract with PRN PRN. Dr. Anwar seconded the motion, and it passed unanimously.

20(h) Michael Ralls, M.D.

Dr. Held asked Dr. Ralls whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Held moved to go to Closed Session. Dr. Rodriguez seconded the motion, and it passed.

Upon returning to Open Session, Dr. Held moved to grant Dr. Ralls' application for a limited license for residency training, contingent upon participation in and completion of the Nevada Health Professionals Assistance Foundation program. Dr. Anwar seconded the motion, and it passed unanimously.

Agenda Item 21

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be included on the agenda for the September Board meeting: election of Board officers; the 2011 meeting schedule; the Board audit by Kohn Colodny for the period of July 1 through December 31, 2009; a presentation by Affiliated Monitors regarding their practitioner assistance programs; and the AIM assessment.

Agenda Item 22

PUBLIC COMMENT

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

ADJOURNMENT

Dr. Held moved to adjourn the meeting. Dr. Rodriguez seconded the motion, and it passed. Dr. Held adjourned the meeting at 4:47 p.m.

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